Supreme Court, U. S.
FILED
DEC 20 1977
MICHAEL RODAK, JR., CLERK

No. 77-613

In the Supreme Court of the United States

OCTOBER TERM, 1977

RICHARD CLEVELAND NOLAN, PETITIONER

v.

NATIONAL TRANSPORTATION SAFETY BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

WADE H. MCCREE, JR.,
Solicitor General,
Department of Justice
Washington, D.C. 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-613

RICHARD CLEVELAND NOLAN, PETITIONER

v.

NATIONAL TRANSPORTATION SAFETY BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

Petitioner seeks to invalidate the order of the National Transportation Safety Board that revoked his commercial airplane pilot certificate.

The Federal Aviation Administration revoked petitioner's certificate after an incident in August 1975 in which he piloted a passenger-carrying Cessna 337 in a restricted high-altitude air space without clearance from air traffic controllers and without equipment required by air safety regulations (Pet. App. 34-35). The Administration concluded that this incident, which followed some fifteen earlier violations of air safety standards, demonstrated petitioner's failure to exercise the care, judgment, and responsibility required of a commercial pilot (Pet. App. 4). After an evidentiary hearing on petitioner's appeal from the Administration's order, an administrative law judge held

that the order was supported by "a preponderance of substantial, reliable and probative evidence" (Pet. App. 14). The National Transportation Safety Board affirmed this decision (Pet. App. 29-30), and petitioner filed a petition for review in the court of appeals.

The court of appeals held that the Board's action was based upon substantial evidence that petitioner exceeded the altitude limit without clearance and that the aircraft was not properly equipped (Pet. App. 35-37), and that the Board did not abuse its discretion in determining on the basis of this and earlier violations that petitioner's license should be revoked (Pet. App. 37-40).

The decision of the court of appeals is correct and review by this Court is not warranted.

Petitioner argues (Pet. 18-19, 27-29) that he was denied due process of law because, he alleges, the court of appeals failed to determine whether the Board's finding that the plane was not properly equipped for the altitude at which it was flying was supported by substantial evidence. Specifically, he contends that the court of appeals failed adequately to evaluate the evidence supporting the order because it adopted the administrative law judge's conclusions concerning the credibility of a witness who testified that the plane was not properly equipped.

It is well-established, however, that the credibility of a witness is a matter that the official conducting the hearing is in a particularly favorable position to assess. The reviewing court therefore may give substantial weight to the evaluation of credibility made by the hearing officer. *National Labor Relations Board* v. *Walton Manufacturing Co.*, 369 U.S. 404, 408; *Universal Camera Corp.* v. *National Labor Relations Board*, 340 U.S. 474, 492-497. In the

present case, the administrative law judge recognized the importance of the witness's testimony and specifically stated his reasons for finding the testimony credible (Pet. App. 11). This determination was properly adopted by the reviewing court "in answering the comprehensive question whether the evidence supporting [the] * * * order is substantial." *Universal Camera Corp.* v. *National Labor Relations Board, supra,* 340 U.S. at 497.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.,
Solicitor General.

DECEMBER 1977.